

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**CHARLENE D. MORGAN**

Claimant

VS.

**WESLEY MEDICAL CENTER**

Respondent

AND

**ZURICH AMERICAN INSURANCE CO.**

Insurance Carrier

Docket No. 1,026,113

**ORDER**

Respondent and its insurance carrier requested review of the February 23, 2006, preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

**ISSUES**

The Administrative Law Judge (ALJ) found it was more probably true than not that claimant was injured while working for respondent and that her injury arose out of and in the course of her employment. Accordingly, the ALJ authorized Dr. Matthew Henry as claimant's treating physician and ordered respondent to pay all outstanding, documented and related medical expenses incurred by claimant to date as listed in claimant's Exhibit No. 6, as well as any out-of-pocket expenses and co-pay expenses incurred by claimant. Respondent was also ordered to reimburse claimant's health insurance carrier for all expenses paid by it regarding treatment of claimant's work-related injury. Respondent was ordered to pay temporary total disability benefits for the periods of August 26, 2005, to September 12, 2005, and from September 23, 2005, to October 23, 2005.

The respondent and its insurance carrier (respondent) concede that claimant's accident occurred in the course of her employment with respondent but argue that claimant failed to meet her burden of proof that she suffered personal injury by accident which arose out of her employment.

Claimant requests that the Order entered by the ALJ be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the record presented to date, the Board makes the following findings of fact and conclusions of law:

Claimant is a nurse manager on the medical intensive care unit (ICU) of respondent and had been at this position since January 2003. She was responsible for the entire function of the medical ICU, including staffing, budget, and hiring and firing of staff. She has an office on the fourth floor of the critical care building. The office has two doors, one provides access from the exterior hallway and the other goes into the main portion of the ICU. Because the office contains sensitive files, the doors to her office remain locked at any time she is not there.

In the course of claimant's job, employees provide her with documents, papers and medical information. If she is in her office, they will bring the papers in to her. If she is not in her office, the papers will usually be slid under the door. When she returns to her office, she will retrieve the information from the floor, which requires her to bend over and pick up the papers. Claimant testified that she usually started each day by picking up papers that have been slid under her door.

On August 26, 2005, claimant walked into her office and over to the interior door that leads to the ICU. There were papers on the floor, so she bent over and gathered them into a pile and picked them up. At that point, she felt pain in her low back. She proceeded to make her rounds and prepared to go to a meeting. During the meeting she started feeling pain in her back to a point where she could not continue sitting, and she had to finish the meeting standing up.

By the lunch hour, claimant was hurting badly and was in tears. She called Employee Health, who set up an appointment for her to see a doctor in Occupational Health. She filled out an H & S report, which is respondent's protocol for reporting injuries. The H & S report indicates she injured her low back while picking up a piece of paper. Although she actually picked up more than one piece of paper, claimant stated that one of her coworkers filled out the form because she was getting ready to see the doctor.

While claimant was seeing the doctor in Occupational Health, she filled out a patient information sheet. In describing the accident, claimant said that she bent to pick up a piece of paper off the floor. Claimant also gave a statement to respondent's investigator regarding her claim. In her statement, claimant described the accident as bending over to pick up a picture that had been magnetized to the side of her credenza when she felt discomfort in her left hip and lower back. Claimant admitted she did not indicate in her statement that she was picking up more than one piece of paper. However, claimant testified that after the recorder was turned off, she continued talking with the investigator and told her that she picks up papers from the floor every day.

Claimant was informed by a letter dated September 1, 2005, that respondent was denying her workers compensation claim. Claimant then contacted her personal physician, Dr. Jeanne Kroeker. Dr. Kroeker ordered an MRI, which showed that claimant had a bulging disc at L4-L5 and a herniation of the disc at L5-S1. Dr. Kroeker then referred claimant to Dr. Matthew Henry, a neurosurgeon. Dr. Henry performed surgery on claimant's low back on September 23, 2005. She is continuing treatment with Dr. Henry, who has placed her in physical therapy. Claimant continues to have complications, as she has a foot drop of her left foot. Claimant turned in the medical charges for her treatment to her health insurance carrier.

Claimant had previously injured her back in 2004 at work when she was walking down a hallway and dropped a piece of paper. When she bent to pick it up, she had pain in her back radiating into her right leg. She turned that claim in as a workers compensation injury, and the injury was accepted as compensable. Claimant described her 2004 injury as a pinched nerve and said that within a couple of days her pain was gone. She did not miss much work as a result of that injury.

Claimant admitted she had a history of back problems and had previous surgery in 1999, which she described as the same surgery she had as a result of her current injury. She had no back problems before 1999 and no problems between 1999 and 2004.

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment.<sup>1</sup> Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.<sup>2</sup>

The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

The phrase 'out of' employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises 'out of' employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises 'out of' employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase 'in the course of' employment relates to the time, place, and circumstances under which the accident

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<sup>1</sup> K.S.A. 2005 Supp. 44-501(a).

<sup>2</sup> *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 278, 899 P.2d 1058 (1995).

occurred and means the injury happened while the worker was at work in the employer's service.<sup>3</sup>

Because the accident occurred while claimant was at work, the accident occurred in the course of claimant's employment. However, the accident must also arise out of the employment before it is compensable under the Kansas Workers Compensation Act.<sup>4</sup>

In *Hensley*<sup>5</sup>, the Kansas Supreme Court adopted a risk analysis. It categorized risks into three categories: (1) those distinctly associated with the job; (2) risks which are personal to the workman; and (3) neutral risks which have no particular employment or personal character.

Although bending over and picking up a piece of paper or even a stack of papers can be described as a normal activity of day-to-day living, K.S.A. 2005 Supp. 44-508(e) does not exclude "accidents" that are the result of such activity, but rather excludes injuries where the "disability" is a result of the natural aging process or the normal activities of day-to-day living.

Here, claimant has a long history of low back problems and even a prior surgery. However, she had been symptom free before this accident and was able to perform her regular job duties without restrictions or accommodations. At a minimum, the accident aggravated claimant's preexisting condition. However, claimant describes her current symptoms as being different from her prior injury. The evidence does not indicate that claimant was at such an increased risk of injury that almost any everyday activity could lead to injury, thereby making her risk solely personal as in *Martin*.<sup>6</sup> Based on the record presented to date, the Board finds claimant's accident and injury arose out of and in the course of her employment with respondent.

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated February 23, 2006, is affirmed.

**IT IS SO ORDERED.**

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<sup>3</sup> *Id.*

<sup>4</sup> See *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

<sup>5</sup> *Hensley v. Carl Graham Glass*, 226 Kan. 256, 597 P.2d 641 (1979).

<sup>6</sup> *Martin v. U.S.D. No. 233*, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

Dated this \_\_\_\_\_ day of May, 2006.

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BOARD MEMBER

c: Charles W. Hess, Attorney for Claimant  
Douglas C. Hobbs, Attorney for Respondent and its Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director